

DEPARTMENT OF INSURANCE

DEPT. OF INSURANCE
BY Kath

Docket No. 99A-259-INS

ORDER

Respondent.

On February 15, 2000, the Office of Administrative Hearings, through Administrative

Law Judge Lewis D. Kowal, issued a Recommended Decision of Administrative Law Judge

("Recommended Decision"), a copy of which is attached and incorporated by this reference. The

Director of the Department of Insurance has reviewed the Recommended Decision and enters the

following Order:

1. The recommended Findings of Fact and Conclusions of Law are adopted.

2. The penalty the Department assessed against the Petitioner for the delinquent

filing of its 1998 audited financial report in the amount of \$3,325.00 is affirmed.

NOTIFICATION OF RIGHTS

Pursuant to A.R.S. § 41-1092.09, the aggrieved party may request a rehearing with respect to this Order by filing a written motion with the Director of the Department of Insurance within 30 days of the date of this Order, setting forth the basis for relief under A.A.C. R20-6-114(B).

The final decision of the Director may be appealed to the Superior Court of Maricopa County for judicial review pursuant to A.R.S. §§ 12-904 and 20-166. A party filing an appeal must

1 notify the Office of Administrative Hearings of the appeal within ten days after filing the complaint
2 commencing the appeal, pursuant to A.R.S. § 12-904(B).

3 DATED this 18th of February, 2000

4
5 

6
7 Charles R. Cohen
Director of Insurance

8
9 A copy of the foregoing mailed
10 this 18 day of February, 2000

11 Sara Begley, Deputy Director
12 Catherine O'Neil, Legal Affairs Officer
13 Gary Torticill, Assistant Director
14 Kelly Stephens, Deputy Assistant Director
15 Department of Insurance
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17 Phoenix, AZ 85018

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 99A-259-INS

STANFORD LIFE INSURANCE
COMPANY (NAIC NO. 77372),

RECOMMENDED DECISION
OF ADMINISTRATIVE
LAW JUDGE

Respondent.

HEARING: February 1, 2000

APPEARANCES: Thomas E. Haney, Esq. on behalf of Petitioner; Assistant
Attorney General Shelby Cuevas on behalf of the Arizona Department of Insurance

ADMINISTRATIVE LAW JUDGE: Lewis D. Kowal

ISSUES RAISED ON APPEAL

1. Did the Arizona Legislature ("Legislature") intend to have the penalty provisions of A.R.S. §20-223(D) apply to the late filing of a audited financial statement/report?

2. Is the penalty that the Arizona Department of Insurance ("Department") assessed against Stanford Life Insurance Company ("Petitioner") in this matter excessive?

APPLICABLE LAW

A.R.S. §20-223 provides:

A. Each authorized domestic insurer shall annually on or before March 31 and each other authorized insurer shall annually on or before March 1 file with the director a true statement of its financial condition, transactions and affairs as of the December 31 preceding. The statement shall be completed pursuant to the instructions and accounting practices and procedures that are approved by the national association of insurance commissioners. The statement shall be in such general form

1 and context as approved by the national association of insurance
2 commissioners for the kinds of insurance to be reported on, and as
3 supplemented for additional information required by the director. The
4 director shall adopt rules providing requirements for the filing of annual
5 audited financial statements. Coincident with the filing of its annual
6 statement, each such insurer shall pay such fees prescribed by §20-167
7 for filing the annual statement and renewal of its certificate of authority....

8 B. The director may refuse to renew, or may suspend or revoke,
9 the certificate of authority of any insurer failing to file its annual statement
10 or pay its fees when due or within any extension of time therefor which the
11 director, for good cause, may have granted.

12 C. Any insurer failing to file an annual statement or to pay its fees
13 pursuant to the provisions of this section is subject to payment of a
14 penalty fee not to exceed twenty-five dollars for each day of delinquency.

15 A.R.S §220 states, in part:

16 A. The director may after a hearing refuse to renew or may revoke
17 or suspend an insurer's certificate of authority, in addition to other grounds
18 therefor in this title if the insurer:

19 1. Violates any provision of this title other than a provision as to
20 which refusal, suspension or revocation is mandatory.

21 2. knowingly fails to comply with any lawful rule or order of the
22 director.

23 3. Is found by the director to be in unsound condition or in such
24 condition as to render its further transaction of insurance in this state
25 hazardous to its policyholders or to the people of this state.

26 4. Usually compels claimants under its policies to accept less than
27 the amount due them or to bring suit against it to secure full payment
28 thereof.

29 5. Refuses to be examined or to produce its accounts, records and
30 files for examination by the director when required.

6. fails to pay any final judgment rendered against it in this state
within thirty days after the judgment becomes final.

7. Is affiliated with and under the same general management or
interlocking directorate or ownership as another insurer which transacts
direct insurance in this state without having a certificate of authority
therefor, except as permitted to a surplus line insurer under article 5 of
this chapter.

B. If after a hearing the director finds grounds pursuant to
Subsection A to suspend or revoke an insurer's certificate of authority, the
director may impose, in lieu of or in addition to such suspension or
revocation, the following civil penalties:

1 1. A penalty not to exceed one thousand dollars for each violation
2 and not to exceed an aggregate of ten thousand dollars within any six-
3 month period with respect to unintentional violations.

4 2. A penalty not to exceed five thousand dollars for each violation
5 and not to exceed an aggregate of fifty thousand dollars within any six-
6 month period with respect to intentional violations. The insurer shall pay
7 the civil penalty to the director for remission to the state treasurer to be
8 placed in the state general fund. The civil penalty is in addition to any
9 other penalty imposed by law....

10 **FINDINGS OF FACT**

11 1. At the commencement of the hearing, the Department withdrew its penalty
12 assessment of \$75.00 against Stanford Life Insurance Company for the late filing of two
13 1999 quarterly financial statements and, as such, Petitioner's appeal in that regard is
14 moot and was not pursued during the hearing.

15 2. At all times material to this matter, Petitioner was a life and disability insurer
16 authorized to conduct business in the State of Arizona.

17 3. On July 15, 1999, the Department sent a notice to Petitioner advising
18 Petitioner that it was delinquent in filing its 1998 audited financial statement/report
19 ("Report"), and the Department intended to assess a penalty of up to \$25.00 for each
20 day that the Report is delinquent pursuant to A.R.S. §20-223.

21 4. On November 5, 1999, the Department sent Petitioner a document via fax
22 advising Petitioner that the Department had assessed a penalty in the sum of \$3,325.00
23 for the late filing of the Report. The assessment was derived by using a penalty in the
24 amount of \$25.00 for each day that the Report was delinquent. Although the Report
25 was due on June 1, 1999, Petitioner filed it with the Department on October 12, 1999,
26 133 days after the June 1 deadline (133 days x \$25.00 = \$3,325.00).

27 5. On December 3, 1999, Petitioner filed a Notice of Appeal of the above-
28 mentioned assessment.

29 6. During the hearing, the parties did not dispute the facts but presented legal
30 arguments concerning the statutory provisions applied by the Department in requiring
 the filing of the Report, the authority of the Department to assess penalties for its late
 filing, and whether the assessed penalty is excessive.

...

1 7. A.R.S. §20-223 provides that a domestic insurer shall file on or before March
2 31, a statement depicting the true nature of its financial condition, transactions, and
3 affairs as of the preceding December 31, commonly referred to as an annual statement.

4 8. In 1991, the Legislature amended Subsection A of A.R.S. §20-223 so as to
5 include the following:

6 The statement shall be completed pursuant to the instructions and
7 accounting practices and procedures that are approved by the national
8 association of insurance commissioners. The statement shall be in such
9 general form and context as approved by the national association of
10 insurance commissioners for the kinds of insurance to be reported upon,
11 and as supplemented for additional information required by the director.

12 9. Petitioner contends that the Legislature did not intend to have all
13 supplemental filings, inserts, and additional reports incidental to the annual statement to
14 be subject to the penalty provisions set forth in A.R.S. §20-223(D). That statute states
15 that "[a]ny insurer failing to file an annual statement or to pay its fee pursuant to the
16 provisions of this section is subject to payment of a penalty fee not to exceed twenty-
17 five dollars for each day of delinquency."

18 10. Petitioner presented an additional argument that because the audited report
19 must be prepared by a certified public accountant, a person different than the one who
20 prepares the bound annual statement of an insurer, the annual financial report has a
21 different filing deadline than the annual statement, and because the fact that the
22 penalty provision of A.R.S. §20-223(D) has existed for twenty years or more without
23 change, the penalty provisions for the late filing of the annual statement should not
24 apply to an audited financial statement.

25 11. The Department asserts that by virtue of the 1991 amendment to A.R.S.
26 §20-223(A), the National Association of Insurance Commissioners' ("NAIC") instructions
27 to the annual statement as addressed above, require a life, accident or health insurer to
28 file an audited financial report by June 1 of each year.

29 12. Petitioner asserts that rather than assessing penalties under A.R.S. §20-
30 223, the Department should have calculated the penalty under A.R.S. §20-220(B)(1), or
proceed with disciplinary action. A.R.S. §20-220(B)(1) provides for a penalty of up to

1 \$1,000.00 for each violation of A.R.S., Title 20, other than that which suspension,
2 revocation or refusal is mandatory. Petitioner also asserts that the amount of penalty
3 assessed against it amounts to approximately 2% of its net worth and is excessive in
4 comparison to the small size of the insurer.

5 13. The applicable NAIC annual statement instructions provide, in part: "All
6 insurers shall have an annual audit conducted by an independent certified public
7 accountant and shall file an audited financial report as a supplement to the annual
8 statement on or before June 1 for the year ended December 31 immediately
9 preceding."

10 14. The evidence of record establishes that Petitioner has a poor compliance
11 history for filing audited financial statements with the Department. The evidence of
12 record establishes that in 1995 and 1996, Petitioner did not submit audited financial
13 statements to the Department. The evidence further shows that in 1997, Petitioner was
14 delinquent in filing an audited financial statement and that such statement was filed on
15 February 1, 1999.

16 15. On June 3, 1998, the Director of the Department suspended Petitioner's
17 certificate of authority because it failed to file an audited financial report for the year of
18 1995 and failed to file other required documents. Petitioner appealed the Suspension
19 Order and a Notice of Hearing was issued by the Department. The hearing was
20 vacated from the docket of the Office of Administrative Hearings based on the filing of a
21 Notice of Settlement and Request to Vacate Hearing. Subsequently, Petitioner filed a
22 Motion and Request to Reinstate Hearing resulting in a Notice to Reinstate Hearing
23 being issued by the Director of the Department on December 21, 1998. As a result of
24 settlement conferences being held by the parties, a Consent Order was issued by the
25 Director of the Department wherein Petitioner represented that it would file annual
26 statements, audited financial reports and other required filings by the required filing
27 date. The Order states that Petitioner "shall make future filings, including...Annual
28 Statements, Quarterly Statements, Audited Financial Reports...by the filing due date."
29 (emphasis added)
30

1 16. By citing the above-mentioned history, the Department maintains that the
2 Department was justified in assessing the maximum penalty against Petitioner because
3 it has exhibited a pattern of disregard for the filing due dates for audited financial
4 statements and the Consent Order.

5
6 **CONCLUSIONS OF LAW**

7 1. According to Petitioner, the Legislature did not intend in A.R.S. §20-223 to
8 provide a penalty for the late filing of any insert or supplemental filing, such as an
9 audited financial statement, in connection with the annual statement of an insurer.
10 Instead, Petitioner contends that the Legislature was concerned about the late filing of
11 the annual statement that is required to be filed by March 31 of each year. Petitioner
12 believes that the Legislature did not intend A.R.S. §20-223(D) be applied to the
13 incidental, supplemental, or insert filings to the annual statement and that the penalty
14 provisions of A.R.S. §20-220(B)(1) is the more appropriate statute that should have
15 been applied in this instance. Additionally, Petitioner contends that pursuant to rules of
16 statutory construction, as set forth in case law cited in Petitioner's Hearing
17 Memorandum, a court will not read into a statute more than the expressed intention of
18 the Legislature based on the express language of the statute and that no liability (i.e.
19 penalty) should be implied absent language to that effect.

20 2. The Department argues that the language of A.R.S. §20-223 expressly refers
21 to the NAIC instructions for annual statements, that such instructions provide for the
22 filing of the audited financial report to be not later than June 1, and that such filing is a
23 supplement to the annual statement. The Department contends that the annual
24 statement is not complete if it is not supplemented by an audited financial report in
25 accordance with the NAIC instructions. According to the Department, in the event that
26 the audited financial statement is not filed by June 1, the penalty provisions of A.R.S.
27 §20-223(D) provide the Department with the authority to assess up to \$25.00 for each
28 day of delinquency.

29 ...

1 3. It is not for this tribunal to question the wisdom of the Legislature's statutes
2 but to make a determination as to their applicability with respect to the facts and issues
3 at hand. The Legislature, knowing of the existence of the penalty provisions set forth in
4 A.R.S. §20-223(D) relating to the late filing of an annual statement, amended that
5 statute to incorporate the NAIC's instructions as set forth in the above Findings of Fact.
6 As such, the language of those instructions is deemed to be part of the Legislature's
7 directive. The instructions require insurers such as Petitioner to file an audited financial
8 report by June 1.

9 4. Petitioner's history with the Department establishes that it was well aware of
10 the filing and deadline requirements for the audited financial statement and that
11 Petitioner has repeatedly failed to meet those requirements. The history also
12 establishes that Petitioner was aware that by failing to meet such deadline, it exposed
13 itself to a penalty assessment for each day of delinquency not to exceed \$25.00 per
14 day. Given this history, Petitioner's arguments as to the excessive nature of the penalty
15 assessed are unpersuasive.¹

16 5. Under the facts and circumstances presented at the hearing, Petitioner
17 should be held accountable for its delinquent action and the evidence of record
18 supports the determination that the Department acted appropriately in using its
19 discretion in assessing a penalty in the amount of \$3,325.00 for the late filing of
20 Petitioner's 1998 audited financial report.

21
22 . . .

23
24 . . .


27 ¹ The fact that the penalty assessed by the Department amounts to 2% of Petitioner's net worth
28 has less to do with the amount of the penalty than it has with the fact that Petitioner, knowing that
29 penalties accrue on a daily basis, waited until 133 days after the required deadline to file its audited
30 financial statement.

1 6. Petitioner fails to meet its burden of showing that the Department is without
2 authority to assess penalties pursuant to A.R.S. §223(D) for the delinquent filing of
3 Petitioner's 1998 audited financial report, and Petitioner fails to show that the
4 penalties assessed by the Department in that regard are excessive.

5 **RECOMMENDED ORDER**

6 Based on the above, the penalty the Department assessed against Petitioner
7 for the delinquent filing of its 1998 audited financial report in the amount of \$3,325.00
8 should be affirmed.

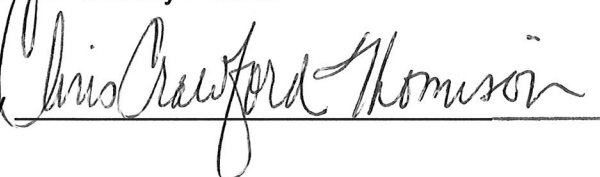
9 Done this day, February 15, 2000

10 
11 _____
12 Lewis D. Kowal
13 Administrative Law Judge
14

15 Original transmitted by mail this
16 16 day of February, 2000, to:
17

18 Department of Insurance
19 Charles R. Cohen
20 2910 North 44th Street, Ste. 210
21 Phoenix, AZ 85018

22 ATTN: Curvey Burton

23 
24 By _____
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28
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30